

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

APR 20 11 46 AM '00

In the Matter of

Amendment of Section 73.202(b), Table of
Allotments, FM Broadcast Stations (Chester,
Shasta Lake City, Alturas, McCloud, Weaverville,
and Shingletown, CA)

)
)
) MM Docket No. 94-76
) MM Docket No. 94-77
) MM Docket No. 95-51 ✓
) RM-8470
) RM-8477
) RM-8523
) RM-8524
) RM-8591
)

Application of Woodrow Michael Warren
Construction Permit for
KLCR-FM, Lakeview, OR

) File No. BPH-960619MF
)
)

Application of McCarthy Wireless, Inc.
Construction Permit for
KISK-FM, Shasta Lake City, CA

) File Nos. BPH-960717MA and
) BLH-980713KD
)

Application for Phoenix Broadcasting, Inc.
Construction Permit for
KBHX-FM, Shingletown, CA

) File No. BPH-961010MF
)
)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: April 6, 2000

Released: April 19, 2000

By the Commission:

1. The Commission has before it an application for review of the allotment decisions in the staff's *Memorandum Opinion and Order* in MM Docket Nos. 94-76, 94-77, and 95-51 ("MO&O") filed by m. JAYNE sawyer d/b/a/ m. JAYNE enterprises ("sawyer").¹ The Commission also has before it sawyer's applications for review of the following related staff actions: (1) grant of Woodrow Michael Warren's application for a new FM station, Lakeview, OR; (2) grant of Phoenix Broadcasting, Inc.'s application for a new FM station, Shingletown, CA; and (3) grant of McCarthy Wireless, Inc.'s application for a new FM station, Shasta Lake City, CA. For the reasons set forth below, we deny sawyer's applications for review.

¹ MO&O, 13 FCC Rcd 8549 (MMB 1998).

2. In two separate, but interrelated rulemaking proceedings, the staff allotted Channel 259A to Chester, CA and Channel 241A to Shingletown, CA. Sawyer filed separate petitions for reconsideration of both the Report & Order in the Chester proceeding² ("*Chester R&O*") and the Report & Order of the Shingletown proceeding³ ("*Shingletown R&O*"). In her petition for reconsideration of the *Chester R&O*, sawyer proposed an alternative allotment plan in order to accommodate her original proposal to allot Channel 296A to Chester.⁴ In her petition for reconsideration of the *Shingletown R&O*, sawyer claimed that the staff improperly allotted Channel 241A to Shingletown, CA. In a consolidated *MO&O*,⁵ the staff denied sawyer's petition as to the *Chester R&O* for failure to show sufficient basis to reconsider the allotment decision. The staff also denied sawyer's petition for reconsideration of the *Shingletown R&O*, finding that allotment of Channel 241A was proper and in accordance with the Commission's rules and procedures.

3. In her application for review of the *MO&O*, sawyer reargues issues that were raised in her petitions for reconsideration. Regarding the *Chester R&O*, sawyer contends that the staff should have compared the allotment plan she suggested in her petition for reconsideration of the *Chester R&O*⁶ with the allotment plan that the staff adopted in the *Chester R&O*.⁷ The staff noted initially that it disagreed with sawyer's contention that a Channel 259A Chester allotment was inferior to Channel 296, and therefore that her proposal resulted in a preferential allotment scheme. As the staff fully explained in the *MO&O*, the two channels are equivalent.⁸ The staff also explained that her scheme had several deficiencies⁹ and was not superior to the scheme adopted because both plans accommodated four mutually exclusive or interrelated rulemaking proposals, resulting in new FM allotments to six communities.

4. In her application for review of the *MO&O*, with regard to the *Shingletown R&O*, sawyer contends that the staff committed prejudicial, procedural error by allotting Channel 241A at Shingletown despite the pendency of her appeal of the *Chester R&O*, where she had proposed the

² MM Dockets 94-76 and 94-77, 11 FCC Rcd 5288 (Allocations Branch, 1996).

³ MM Docket 95-51, 11 FCC Rcd 8672 (Allocations Branch, 1996).

⁴ In her petition for reconsideration, she proposed the allotment of Channel 237C3 to McCloud in lieu of Channel 238C3 and Channel 242C2 to Shasta Lake City in lieu of Channel 296C3. She also proposed to allot Channel 299C or Channel 297C1 in lieu of Channel 297C to Alturas, or alternatively she suggested that Channel 297C not be allotted at all because there is already a vacant Class C3 channel allotted to that community. See *MO&O*, 13 FCC Rcd at 8551 n.2.

⁵ See *supra* note 1.

⁶ See *id.* at 8551 n. 2.

⁷ See *id.* at 8550 ¶ 5.

⁸ See *id.* at 8552 ¶ 13.

⁹ See *id.* at 8553 n. 5.

mutually exclusive allotment of Channel 242C2 at Shasta Lake City. We disagree. The Commission's rules no longer prohibit the grant and construction of authorized facilities pending final resolution of a related, outstanding rulemaking proceeding. *See Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders*, 11 FCC Rcd 9501 (1996) (deleting rule that automatically stayed in allotment proceedings upon the filing of a petition for reconsideration). *See e.g. Cloverdale, Montgomery and Warrior, AL*, 12 FCC Rcd 2090, 2093 (MMB 1997) (since lifting the automatic stay provision, the Commission routinely grants applications notwithstanding petitions pending in related proceedings).

5. Sawyer has also filed applications for review with respect to the construction permits granted in Lakeview, Shingletown and Shasta Lake City. She argues that the staff should have withheld issuance of the permits until final action was taken on her appeals in the *Chester* and *Shingletown R&Os*. Regarding the issuance of the Lakeview and the Shingletown permits, we do not need to reach the merits of sawyer's arguments. In both proceedings, sawyer failed to participate in earlier stages of the proceedings where the staff granted the underlying construction permits, and she failed to show good reason why she could not do so, as required by 47 C.F.R. §1.115(a).¹⁰ Furthermore, there is no merit to sawyer's argument that participation in an allotment rulemaking confers automatic party status in a related application proceeding. *See e.g. Esperanza, Puerto Rico, Christiansted, Virgin Islands*, 11 FCC Rcd 2908, 2908-09 (MMB 1996).

6. As for sawyer's application for review of the grant of the Shasta Lake City permit, we find that the staff properly denied sawyer's petition to deny because the Commission's rules no longer require that the staff dispose of sawyer's appeal in the *Chester R&O* prior to granting the Shasta Lake City permit.¹¹ *See Amendment of Section 1.420(f) of the Commission's Rules Concerning Automatic Stays of Certain Allotment Orders*, 11 FCC Rcd 9501, 9504-05 (1996).

7. ACCORDINGLY, IT IS ORDERED, that the Application for Review filed by m. JAYNE sawyer d/b/a m. JAYNE enterprises in Docket Nos. 94-76, 94-77 and 95-51 IS HEREBY DENIED;

8. IT IS FURTHER ORDERED, that the Application for Review filed by m. JAYNE sawyer d/b/a m. JAYNE enterprises against Woodrow Michael Warren's application for a construction permit for FM station, Lakeview, OR (File No. BPH-960619MF) and the Application for Review and Motion to Impose Stay against Phoenix Broadcasting, Inc.'s application for a construction permit for FM station, Shingletown, CA (File No. BPH-961010MF) ARE HEREBY DISMISSED;

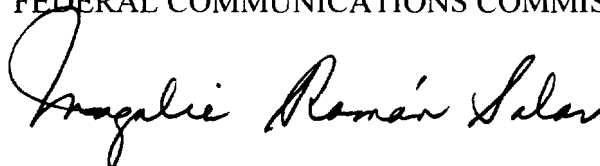
¹⁰ Although sawyer filed a petition for reconsideration of the grant of the Lakeview construction permit, her petition was properly dismissed by the staff for her failure to participate in earlier stages of the proceeding as required by 47 C.F.R. §1.106(b)(1). *See* June 3, 1998 letter from Linda Blair, Chief, Audio Services Division, Mass Media Bureau to Ms. m JAYNE sawyer. (1800B3-JWR).

¹¹ Sawyer also requested stays of the grants of the Shasta Lake City and Shingletown permits. Based on our actions in this Order, the requests for stay are rendered moot.

9. IT IS FURTHER ORDERED, that the Application for Review and Motion to Impose Stay filed by m. JAYNE sawyer d/b/a m. JAYNE enterprises against McCarthy Wireless, Inc.'s construction permit for FM station, Shasta Lake City, CA (File No. BPH-960717MA) IS HEREBY DENIED and the application for a license to cover the construction permit (File No. BLH-980713KD) IS HEREBY GRANTED.

10. IT IS FURTHER ORDERED, that these proceedings ARE TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, reading "Magalie Roman Salas". The signature is written in a cursive, flowing style.

Magalie Roman Salas
Secretary